

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

COURVOISIER SIMS,

Petitioner,

vs.

BARB LEWIEN, Warden,<sup>1</sup>

Respondent.

**8:24CV302**

**MEMORANDUM AND ORDER**

This matter is before the Court on preliminary review of Petitioner Courvoisier Sims' Petition for Writ of Habeas Corpus, Filing No. 1, brought pursuant to 28 U.S.C. § 2254. The purpose of this review is to determine whether Petitioner's claims, when liberally construed, are potentially cognizable in federal court. Condensed and summarized for clarity, Petitioner's claims are:

Claim One: The state district court's decision finding that Petitioner did not raise a layered claim of ineffective assistance of counsel in his postconviction motion is an unreasonable application of federal law.

Claim Two: Appellate counsel was ineffective for failing to properly challenge, on direct appeal, trial counsel's ineffectiveness for failing to object to Petitioner's guilty plea to second degree murder.

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<sup>1</sup> Though Petitioner lists "United States of America" as the respondent in the caption of his petition, Petitioner lists "Barb Lewien, Warden" as the respondent when referring to his habeas case in an attached letter addressed to the Clerk's office. *Compare* Filing No. 1 at 1 *with* Filing No. 1 at 28. As Petitioner is clearly in the custody of the state of Nebraska, the Court will update the caption to identify Warden Barb Lewien as the sole respondent.

Claim One is not cognizable in a federal habeas action as it is based on errors in the state postconviction proceedings. Errors during state postconviction review are not cognizable in a federal habeas corpus action. *See Bell-Bey v. Roper*, 499 F.3d 752, 756 (8th Cir. 2007) (“Because the Constitution does not guarantee the existence of state post-conviction proceedings, an infirmity in a state post-conviction proceeding does not raise a constitutional issue cognizable in a federal habeas application.” (cleaned up)); *Jenkins v. Houston*, 4:05CV3099, 2006 WL 126632 (D. Neb. 2006) (collecting cases). Accordingly, Claim One is dismissed.

The Court determines, however, that Claim Two, when liberally construed, is potentially cognizable in federal court. The Court cautions Petitioner that no determination has been made regarding the merits of this claim or any defenses to the claim or whether there are procedural bars that will prevent Petitioner from obtaining the relief sought.

IT IS THEREFORE ORDERED that:

1. Upon initial review of the habeas corpus petition, Filing No. 1, the Court preliminarily determines that Petitioner’s Claim Two, as set forth in this Memorandum and Order, is potentially cognizable in federal court. **Claim One is dismissed.**

2. By **May 5, 2025**, Respondent must file a motion for summary judgment or state court records in support of an answer. The Clerk of the Court is directed to set a pro se case management deadline in this case using the following text: **May 5, 2025**: deadline for Respondent to file state court records in support of answer or motion for summary judgment.

3. If Respondent elects to file a motion for summary judgment, the following procedures must be followed by Respondent and Petitioner:

- A. The motion for summary judgment must be accompanied by a separate brief, submitted at the time the motion is filed.
- B. The motion for summary judgment must be supported by any state court records that are necessary to support the motion. Those records must be contained in a separate filing entitled: “Designation of State Court Records in Support of Motion for Summary Judgment.”
- C. Copies of the motion for summary judgment, the designation, including state court records, and Respondent’s brief must be served on Petitioner *except* that Respondent is only required to provide Petitioner with a copy of the specific pages of the record that are cited in Respondent’s motion and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the Court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.
- D. No later than 30 days following the filing of the motion for summary judgment, Petitioner must file and serve a brief in opposition to the motion for summary judgment. Petitioner may not submit other documents unless directed to do so by the Court.
- E. No later than 30 days after Petitioner’s brief is filed, Respondent must file and serve a reply brief. In the event

that Respondent elects not to file a reply brief, she should inform the Court by filing a notice stating that she will not file a reply brief and that the motion is therefore fully submitted for decision.

- F. If the motion for summary judgment is denied, Respondent must file an answer, a designation and a brief that complies with terms of this order. (See the following paragraph.) The documents must be filed no later than 30 days after the denial of the motion for summary judgment. **Respondent is warned that failure to file an answer, a designation and a brief in a timely fashion may result in the imposition of sanctions, including Petitioner's release.**

4. If Respondent elects to file an answer, the following procedures must be followed by Respondent and Petitioner:

- A. By **May 5, 2025**, Respondent must file all state court records that are relevant to the cognizable claims. *See, e.g., Rule 5(c)-(d) of the Rules Governing Section 2254 Cases in the United States District Courts.* Those records must be contained in a separate filing entitled: "Designation of State Court Records in Support of Answer."
- B. No later than 30 days after the relevant state court records are filed, Respondent must file an answer. The answer must be accompanied by a separate brief, submitted at the time the answer is filed. Both the answer and the brief must address all matters germane to the case including, but not limited to, the merits of Petitioner's allegations that

have survived initial review, and whether any claim is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition. *See, e.g.,* Rules 5(b) and 9 of the *Rules Governing Section 2254 Cases in the United States District Courts*.

- C. Copies of the answer, the designation, and Respondent's brief must be served on Petitioner at the time they are filed with the Court *except* that Respondent is only required to provide Petitioner with a copy of the specific pages of the designated record that are cited in Respondent's answer and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the Court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.
- D. No later than 30 days after Respondent's brief is filed, Petitioner must file and serve a brief in response. Petitioner must not submit any other documents unless directed to do so by the Court.
- E. No later than 30 days after Petitioner's brief is filed, Respondent must file and serve a reply brief. In the event that Respondent elects not to file a reply brief, she should inform the Court by filing a notice stating that she will not

file a reply brief and that the merits of the petition are therefore fully submitted for decision.

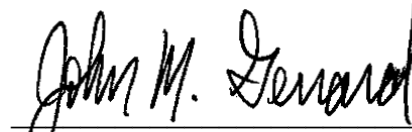
- F. The Clerk of the Court is directed to set a pro se case management deadline in this case using the following text: **June 4, 2025:** check for Respondent's answer and separate brief.

5. No discovery shall be undertaken without leave of the Court. *See Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts.*

6. The Clerk of the Court is directed to update the Court's records to reflect that "Barb Lewien, Warden," is the sole proper respondent in this action.

Dated this 21st day of March, 2025.

BY THE COURT:

A handwritten signature in black ink, reading "John M. Gerrard", written over a horizontal line.

John M. Gerrard  
Senior United States District Judge